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ALL ASPECTS OF THE SET OF MULTILATERALLY
AGREED EQUITABLE PRINCIPLES AND RULES FOR
THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES
Geneva, 26 November 1990
Agenda item 11

DRAFT REPORT OF THE SECOND UNITED NATIONS CONFERENCE TO REVIEW ALL ASPECTS OF THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES

Held at the Palais des Nations, Geneva,
from 26 November to 7 December 1990

Rapporteur: Mr. Walid Mahmoud Abdel-Nasser (Egypt)

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INTRODUCTION

1. Pursuant to General Assembly resolution 41/167, the Second United Nations Conference to Review all Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices was convened at the Palais des Nations, Geneva, from 26 November to 7 December 1990. In accordance with the same resolution, the Intergovernmental Group of Experts on Restrictive Business Practices, at its ninth session (23-27 April 1990), served as the preparatory body for the Conference. 1/

2. In the course of the session, the Review Conference held ... plenary meetings. This report gives a brief account of the proceedings of those meetings.

Opening statements

3. Speaking upon his election to the presidency of the Conference, the President observed that the world was now quite different from what it had been 10 years ago when the Set of Principles and Rules had been adopted, or even 5 years ago when the first Review Conference had been held. The past year, in particular, had seen very rapid changes in the international economy and there was now a greater and more widespread appreciation of the benefits of the free market and competition. At the same time, it was generally recognized that there must be a framework for the regulation of free competition. It would therefore be the task of the Second Review Conference to see how the Set of Principles and Rules could be implemented to meet the challenges of the 1990s and thus help all countries to move towards a system of free-market economies.

4. In his opening statement, the Secretary-General of UNCTAD stated that the Conference came at a time when the world economy was undergoing fundamental changes with respect to the competitive environment. The trend of "deregulation", initiated in the early 1980s in major developed countries, had now spread to a wide range of developed and developing countries. While developed countries had broadened the scope for the play of competitive forces - in particular as regards services - developing countries had adopted far-reaching reform programmes with greater emphasis on market forces to determine prices. These policies were also frequently accompanied by a greater opening of the economy to foreign competition, including the progressive removal of trade barriers and the relaxation of investment rules. Developments in countries in Eastern Europe had added further momentum to this

trend, with several of the former centrally-planned economies deliberately switching to a market economy, and others adopting reforms aimed at making better use of market mechanisms.

5. Moveover, in the area of international trade, intensive efforts were being pursued in the Uruguay Round, where the negotiations encompassed proposals for the liberalization of trade in goods and services and for agreements on a number of competition-related issues such as TRIMS and TRIPS. In these areas, developing countries were pressing for results which would preserve their freedom of action to deal with RBPs and to establish international mechanisms to facilitate the elimination of anti-competitive practices. Furthermore, the approaching deadline of 1992 for the completion of the Single European Market and the ensuing repercussions had begun to make a far-reaching impact on the competitivity of enterprises throughout the world. The creation of other trading blocs, such as the United States-Canada Free Trade Area, was having similar results. Enterprises from non-member countries, such as Japan, Switzerland or Sweden, had long sought to cross borders and to integrate or extend their activities into the emerging blocs. Firms originating from these blocs were striving to attain the "critical size" necessary for them to meet competititon in the emerging new markets. All these factors tended to foster the increasing competitiveness of enterprises on a global scale.

6. The case for competition was now widely accepted: it had the potential to act as a powerful incentive to enterprises to achieve maximum price/quality ratios, help accelerate technological progress, and generally work in the interests of consumer welfare. Crucial to realizing this potential, however, was the existence of a policy environment designed to ensure that firms actually competed and that they did so within the framework of appropriate "rules of the game" that were well defined and applied. Countries, therefore, needed to take urgent action at both national and international levels in a mutually reinforcing manner to promote and protect competition. Countries adopting market-oriented reforms were eager to adopt competition legislation and the necessary judicial and administrative procedures for implementing the control of restrictive business practices. This was fully in line with the Set of Principles and Rules which called for adoption and implementation of RBP legislation.

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7. For a decade or so, developed countries in particular had insisted that this provision of the Set was essential in the implementation of the Principles and Rules. At present, as shown in the report by the secretariat on technical assistance (TD/RBP/CONF.3/4 and Corr.1), the UNCTAD secretariat was faced with an unprecedented number of requests from developing countries for technical assistance in the area of RBPs, as well as from countries in Eastern Europe. While the secretariat had provided a certain amount of technical assistance in the form of regional seminars for developing countries, these requests indicated an urgent need for advice at the national level in the drafting of competition legislation, for assistance in the necessary institution-building and for the training of officials in the actual control of restrictive business practices. This Review Conference was an important occasion for all countries to take stock of developments in this area, and for enhancing support for the UNCTAD secretariat's efforts through the provision of finance and expertise. Accordingly, the report proposed a number of initiatives at the national level, including seminars, advisory missions, training workshops and on-the-job training internships.

8. In addition to technical assistance, the Review Conference needed to tackle two specific areas that had been addressed in the Final Act of UNCTAD VII, namely improving transparency and defining consultation procedures in respect of RBPs. While these issues were already broadly covered in the Set, there was wide scope for improving the implementation of the provisions in these areas. The secretariat report on this subject (TD/RBP/CONF.3/3 and Add.1) reviewed the main issues in this regard and made a number of concrete proposals. On transparency, the report analysed the various types of transparency, reviewed possibilities under the existing provisions of the Set and explored ways and means for improving the implementation of the various provisions related to the exchange of information, with a view to improving transparency in this area. One point made in the report was that exchange of information between RBP control authorities could be facilitated if it occurred between countries which did have RBP control legislation and which did apply competition policy. Improving transparency, therefore, depended to a great extent on adoption of RBP control legislation and on the existence of an administering authority in developing countries wishing to receive information from abroad. In turn, adopting RBP control legislation implied, for a great number of countries, familiarizing themselves with RBP issues, drafting legislation and the training of officials. As already explained,

these efforts would be greatly facilitated by well-designed technical assistance, advisory and training programmes. In the first instance, developing countries had to build up the necessary expertise on competition issues, which would in turn facilitate closer contacts between competition authorities and pave the way for exchanges of information. Procedures could be envisaged for notification, exchanges of information and the co-ordination of action along the lines, for example, of the OECD Council recommendation on co-operation between member countries on RBPs affecting international trade. For the time being, however, the report suggested that an agreed standard information request form could be prepared. Such a form would allow the country requesting information to identify more easily the specific data it was seeking to obtain within the framework of its RBP legislation, and to formulate its request in a way which also facilitated compliance by the responding country.

9. The report also suggested the preparation of a questionnaire containing all relevant questions with respect to requests by the UNCTAD secretariat for information in the preparation of its reports on "Steps taken by States to comply with their commitments under the Set", as well as in the preparation of the Annual Report on Restrictive Business Practices. In addition, as a practical step towards the improvement of communications with RBP control authorities, the report contained a preliminary list of addresses of such authorities, along with a list of publicly available information which could be obtained from these authorities, upon request, by other States.

10. As regards the definition of consultation procedures, the report analysed the actual provisions of the Set and proposed that a standard consultation request form be agreed upon, in the same way as that proposed with respect to requests for information. It also suggested that a single form could be used both for information and for consultations. Attention should also be drawn in this respect to the OECD Council Recommendation just mentioned as a useful element for the work that lay ahead on consultation and conciliation procedures.

11. In conclusion, he said that there appeared to be a convergence of views on a number of essential points, just as there was general recognition of the far-reaching opportunities that were emerging for developing competition in the world economy and the international trading system, which augured well for the Review Conference.

12. The Chairman of the Intergovernmental Group of Experts on Restrictive Business Practices at its ninth session (Sweden), introducing the report of the Intergovernmental Group (TD/B/1261 - TD/B/RBP/76), drew attention to the agreed conclusions annexed to the report (annex I), as well as to the draft decision submitted by Algeria on behalf of the States members of the Group of 77 (annex III) and the draft recommendations proposed by the Netherlands on behalf of the States members of Group B (annex IV). He recalled that the provisional agenda and the provisional rules of procedure had also been approved by the Intergovernmental Group. He was confident that the co-operation and good will shown by the participants in the Intergovernmental Group would continue to prevail at the Review Conference.

Footnote

1/ For the report of the Intergovernmental Group of Experts on its ninth session, see TD/B/1261-TD/B/RBP/76.

Chapter I

REVIEW OF ALL ASPECTS OF THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES:

(a) REVIEW OF TEN YEARS OF APPLICATION AND IMPLEMENTATION OF THE SET;

(b) CONSIDERATION OF PROPOSALS FOR THE IMPROVEMENT AND FURTHER DEVELOPMENT OF THE SET, INCLUDING INTERNATIONAL CO-OPERATION IN THE FIELD OF CONTROL OF RESTRICTIVE BUSINESS PRACTICES

(Agenda item 8)

13. For its consideration of agenda item 8, the Review Conference had before it the following documents:

"Proposals on transparency and consultation procedures in the field of restrictive business practices" - report by the UNCTAD secretariat (TD/RBP/CONF.3/3 and Add.1)

"Technical assistance, advisory and training programmes and restrictive business practices" - report by the UNCTAD secretariat (TD/RBP/CONF.3/4 and Corr.1)

"Preparations for a handbook on restrictive business practices legislation" - note by the UNCTAD secretariat (TD/RBP/CONF.3/5)

Report of the Intergovernmental Group of Experts on Restrictive Business Practices on its ninth session (TD/B/1261-TD/B/RBP/76).

14. The spokesman for the Group of 77 (Philippines) said that one of the major tasks of this Conference was the strengthening of the commitments entered into by all parties when the Set of Principles and Rules had been adopted. The Group of 77 wished to reiterate its concern that, 10 years after the adoption of the Set, restrictive business practices continued to affect adversely international trade, in particular the trade and development of developing countries. Concrete measures were therefore necessary to eliminate or at least effectively control restrictive business practices. In contrast to the atmosphere of the first Review Conference, a fundamental change had taken place in the political will of countries to meet fully the commitments entered into upon the adoption of the Set. This political will, which had been apparent at the preparatory session of the Intergovernmental Group of Experts, had given his Group a new hope that the Conference would take concrete measures towards the effective implementation of the Set.

15. Elaborating on the concern of his Group over the inadequate implementation of the Set, he referred to the assessment made in chapter I of TD/B/RBP/69 and added that the subtlety and secrecy with which enterprises engaged in RBPs precluded the gathering of conclusive empirical evidence. However, he was convinced that enterprises continued to use RBPs in the area of trade in goods and services, as well as investment and technology. In this respect the dominant role played by transnational corporations (TNCs) in the world economy was well known. The biggest TNCs had sales which exceeded the aggregate output of most developing countries. The largest 56 companies had sales ranging from $10 billion to $100 billion. Their importance as purchasers, manufacturers, suppliers and sellers of goods and services was such that they automatically acquired a dominant position of market power in most developing-country markets and in international transactions. These enterprises thus had an unequal bargaining power vis-à-vis not only the enterprises, but even the governments of many developing countries. It was therefore imperative that the solemn commitment of States to implement the Set be fully adhered to both at the international and at the national level.

16. As indicated in the statement of the Secretary-General of UNCTAD, the trend towards liberalization of markets from regulation and monopoly which had begun in developed countries had now embraced most developing countries. Many of them had had to implement stringent economic adjustment programmes as required by international financing institutions by decontrolling prices across the board, removing subsidies even on essential commodities, and by privatization of State enterprises. Furthermore, this trend was also visible in the recent economic reforms adopted in Eastern Europe and in the efforts leading to a Single European Market in 1992. The Group of 77 was concerned that dismantling of existing regulations might lead to a situation of "laissez-faire" where there would be no checks and balances for the control of RBPs. Should this happen, the paradox would be that competition would lead to no competition, resulting in monopoly to the detriment of consumers and social welfare. He added that, without prejudging the outcome of the multilateral trade negotiations (MTNs) in the Uruguay Round, the proposals to liberalize trade in services and to reach agreements on trade-related aspects of intellectual property rights (TRIPs), and trade-related investment measures (TRIMs) might lead to similar results unless concrete measures were taken in compliance with the Set of Principles and Rules. With regard to the so-called "grey area" trade restraints, such as voluntary export restraints (VERs) and orderly marketing arrangements (OMAs) which had arisen during the

decade, his Group had time and again expressed its concern about these disguised forms of RBPs, in which collusion between governments and their national enterprises was apparent.

17. All these considerations were sufficient to indicate why the Group of 77 had reached the conclusion that the Set of Principles and Rules had not been adequately implemented and that this Conference must seriously consider the proposals of his Group, and those of others, for the improvement and further development of the Set. Although the Set was a good basis, it was not a perfect instrument and, hence, it needed further improvement and development. The proposals of the Group of 77 for such improvement were contained in the draft decision submitted by Algeria on behalf of the States members of the Group of 77 at the ninth session of the Intergovernmental Group of Experts on Restrictive Business Practices (cf. TD/B/1261, annex III). In summary, the proposals were as follows:

(a) The proposed amendments to the Set of Principles and Rules;

(b) Transparency;

(c) Consultation procedures;

(d) Special Committee on RBPs;

(e) Technical assistance;

(f) A Third United Nations Conference to Review all Aspects of the Set of Principles and Rules.

18. With regard to specific amendments, he recalled that, at the time of the adoption of the Set, many States had accepted the fact that the Set provided the minimum standards and, therefore, further improvements should be made to it. This view had become even more valid as a result of the experience States had had during the 10 years following the adoption of the Set. It was proposed to repeal the exemption to enterprises of the same economic entity contained in paragraph D.3; to delete the footnote to paragraph D.4 concerning acts in abuse of a dominant position; to delete the expression "unduly" in the relevant provisions of the Set; and to specify that in section B.9 of the Set the exemption applied only to formal intergovernmental agreements.

19. Furthermore, it was proposed to strengthen the objectives of the Set by adding the following wording: "help accelerate and promote" in paragraph 2, "and efficiency" in subparagraph (c), and by adding a new subparagraph (d) to read "stimulation of investment and economic growth". The "Principles" in section C of the Set ought to be strengthened. Thus, it was proposed to add the following wording: in paragraph 1, "appropriate action should be taken by

Governments in a mutually reinforcing manner ..."; in paragraph 2, "especially between Governments of developed and developing countries"; and in paragraph 7, "for the equitable application of the Set of Principles and Rules, States, particularly developed countries, should ensure that their enterprises do not engage in restrictive business practices adversely affecting the trade and development of developing countries, and ...".

20. Finally, under "Principles and rules for States", in Section E, paragraph 6, it was proposed to add, "adversely affecting international trade, particularly the trade and development of developing countries".

21. On the question of transparency, his Group was concerned that, as regulations, laws and other traditional barriers to trade were eliminated through trade liberalization, transparency in trade barriers would diminish correspondingly as RBPs increasingly became the main instrument of protection, especially since, as mentioned earlier, such practices were, by their very nature, subtle and secret. The proposal of his Group, therefore, sought to remedy this situation. In the course of the deliberations under this item, he intended to elaborate these proposals further.

22. With regard to consultation procedures as contained in section F.4 of the Set of Principles and Rules, the Group of 77 proposed that these procedures should be clearly defined to enable developing countries to identify appropriate corrective or preventive measures against RBPs. His Group was of the view that one of the reasons why the consultation procedures of the Set had not been utilized was that the precise steps to be followed by States wishing to consult other States on RBP issues had not been clearly defined. Rather than change the wording under provision F.4 of the Set, what was needed in this respect was more detailed application procedure for the consultations.

23. The Group of 77 had also proposed the creation of a Special Committee on Restrictive Business Practices, to be assigned the functions enumerated in section G of the Set. His Group believed that those functions were appropriate to a committee of UNCTAD with a mandate to make recommendations to States.

24. As to Technical assistance, with respect to the regulatory vacuum previously mentioned that was occurring in the economies of developing countries, technical assistance to such countries was imperative. This was one issue on which all regional groups agreed. He therefore hoped that the Review Conference could reach an agreement on the implementation of the technical assistance programme set out in the secretariat report (TD/RBP/CONF.3/4 and Corr.1).

25. Finally, with regard to a Third Review Conference in 1995, he emphasized that RBP control was an ongoing process and, therefore, the review of the Set should equally be dynamic. Hence, a third review conference was a proposal that should be acceptable to all regional groups.

26. The spokesman for Group B (Netherlands), said that the Second Review Conference was taking place under different conditions from those which had prevailed during the First Review in 1985. Since then, the European Economic Community had been enabled to participate fully in the Intergovernmental Group of Experts on a non-voting basis, reflecting the importance of its tasks in the field of competition policy. Among the developments since 1985, two specific factors were worth mentioning in connection with the review of all aspects of the Set: first, the changing approach of Governments towards regulation and the increasing reliance on market mechanisms; and, secondly, the increasing international commitment to controlling restrictive business practices through the enactment and enforcement of restrictive business practices laws. On each of these factors his Group wished to make some observations which it considered relevant to the review of the implementation of the Set and equally to three specific subjects to be discussed during this Conference, i.e. the issues of information and consultation and the necessity of providing technical assistance.

27. The changing attitude towards regulation had been prompted by the recognition - confirmed by experience - that failure was not confined to markets, but also to attributable Governments. Interventions by Governments through public ownership or other forms of regulation intended to correct real or perceived market failure appeared often to have had adverse consequences for the achievement of efficiency or to have been outdated by changes in technology. A striking example was the telecommunications industry where, through new technology, alternative networks had emerged to compete effectively with the existing system. Thus, a reappraisal of State regulation had become necessary. Experience with regulatory reform - or deregulation - showed that, once government regulations were removed in a particular sector, the existence of effective competition legislation was of paramount importance. Competition policy enforcement had to ensure that such regulations were not replaced by anti-competitive agreements such as agreements to fix prices, to restrict output or to allocate markets. In doing so, competition authorities might ensure that such old habits, which were permitted under the régime of regulation, were abandoned. Equally, an effective competition legislation was

needed to prevent previously regulated enterprises in a particular sector from trying to dominate the market through forms of anti-competitive behaviour such as restricting access to important facilities.

28. Another form of deregulation took place where limitations on the application of national competition laws were lifted: limitations which excluded certain sectors from the application of competition law, such as banking and insurance, transport and energy. The view was now emerging that, in principle, measures should be implemented in these sectors to promote competition. This underlined the need for competition legislation to be amended where necessary. A particular aspect of deregulation was the development taking place in those countries where the State-planned economies were being abandoned and where use of market forces was being introduced. In those countries the introduction of legislation on competition was being treated as a particularly urgent matter.

29. Concerning the factor of increasing international commitment to controlling restrictive business practices as a consequence of the growing deregulation and internationalization of markets, it was important to note that, particularly in the period since 1985, quite a number of Group B countries, through the application of their national competition legislation, had been dealing with issues in this field and appeared to be capable of effectively controlling restrictive business practices. There were new competition laws in, among other countries, Canada and Italy, a new merger regulation in the EEC and tougher criminal penalties in the United States. This line of conduct - local control by national competition authorities - showed that, even if practices originated abroad, these authorities were capable of taking action either because the enterprise behaviour effectively took place within their national markets or - in cases where the national law empowered them to do so - because the effect of this behaviour led to restraints in competition on their domestic markets. In thus controlling RBPs they contributed to implementing the Set.

30. Both factors pointed to the conclusion that the objective of defending competition rather than relying on action from outside was best served by adopting or improving restrictive business practices legislation and setting up effective institutions to apply such legislation. In this respect, Group B shared the view expressed by the representative of the Secretary-General of UNCTAD in his opening statement at the ninth session of the Intergovernmental

Group of Experts, when he observed that setting up legislation and effective procedures "was a well-established policy in practically all developed market-economy countries." In this context, as liberalization of markets took place and national competition laws and policies were established to an increasing extent also in developing countries, a more fruitful dialogue and exchange of views on national experiences on competition policies could be foreseen within the Intergovernmental Group. In short, Group B considered that the Set as it stood had an important part to play in the control of restrictive business practices and that the changing conditions under which it operated appeared to improve its utility.

31. Turning to agenda item 8 (b) - the consideration of proposals for the improvement and further development of the Set - he said that these proposals fell into three categories: information, consultation, and technical assistance. In conformity with the agreed conclusions of the Intergovermental Group at its ninth session, the Conference would have to consider various proposals, first with regard to information and consultation and secondly on technical assistance.

32. The general position of Group B on the issue of information and consultation was that the main action to be undertaken was to guarantee that the exchange of information and appropriate consultations were being conducted in accordance with the Set, and that there was no need for changes in the wording of the Set.

33. In the provisions on information, the Set recognized that RBP laws could only be properly applied when relevant information was available, subject to suitable protection of information which was commercially confidential. Therefore, when adopting or amending RBP legislation, Governments should see to it that the law would provide for effective procedures to obtain information. Moreover, the Set also recommended that States should be willing to share information with other States. To this end, the Set made a distinction between publicly available information and other information. Group B welcomed the information given by the secretariat in its report (TD/RBP/CONF.3/3 and Add.1) on the different categories of publicly available information. As to the "other information" and the various proposals submitted in this context, the consideration of the content of these proposals would have to take into account the qualifications mentioned in section E.9 of the Set - i.e. that was that the supply of this "other information" should be necessary to the receiving interested State and could be given only to the

extent consistent with the laws and established public policy of the State supplying the information. Detailed comments on these proposals would be given at a later stage during the Conference.

34. On consultations, Group B wished to reiterate the position it had taken at the ninth session of the Intergovernmental Group, i.e. that there was no justification for a new consultation procedure because the existing one had not been shown to be defective. The Conference should essentially concentrate its efforts on identifying elements that might assist member States in entering into and in holding consultations, in accordance with the Set.

35. All groups recognized the increasing importance of technical assistance in the area of RBP control and agreed that this activity should continue and develop. All groups would agree that, given the budgetary constraints that every country faced, it was important to ensure that resources were being used effectively. This was true for technical assistance already carried out in order to be able to evaluate what had been done. And it was equally true for the proposed programmes. Group B thought that these elements were not sufficiently present in the report prepared by the secretariat (TD/RBP/CONF.3/4 and Corr.1). Moreover, it should also be stressed that experience showed - with regard to technical assistance to East European countries as well as to developing countries - that technical assistance on a bilateral basis had been useful. This aspect should also be taken up when discussing technical assistance. Group B intended to submit a proposal on improved mechanisms for informal consultations.

36. The representative of China said that it was important to acknowledge at the outset of the Conference the contributions and progress made by the international community in its efforts to ensure the implementation of the Set of Principles and Rules as well as the role it had played in promoting the RBP controls in all countries. During these past 10 years, the UNCTAD secretariat had carried out extensive studies necessary for review and countries had taken an active part in all the sessions of the Intergovernmental Group of Experts. Moreover, Governments had adopted, to a varying extent, measures to control RBPs in keeping with their obligations under the Set, by drafting or improving legislation in this field and carrying out some technical assistance projects for the control of RBPs. He expressed appreciation to the UNCTAD secretariat, UNDP, ESCAP, the United Nations Centre on Transnational Corporations and other relevant international agencies as

well as countries such as France, Germany, Japan, the Soviet Union and Sweden for their contribution over the past 10 years to China's efforts in formulating RBP legislation and strengthening RBP controls.

37. Considering its overall objectives, however, he believed that the Set had not been implemented in an earnest, effective and full manner over the past 10 years. The decade following its adoption had witnessed a slump in the growth of the world economy and trade and a rise in trade protectionism. In an effort to free themselves from economic hardships, some major developed market-economy countries had resorted increasingly to trade protective measures, including RBPs as a principal non-tariff barrier measure. This had seriously undermined the development of the world economy and compounded in particular the difficulties facing developing countries in the development of their economies and trade. Against such an unfavourable background to international trade, effective international measures aimed at controlling RBPs and the international co-operation in this area had proved to be woefully inadequate.

38. Although the basic elements of the Set remained valid, the Set was the product of compromise on all sides, with many areas still left undefined. In view of the many changes that had occurred in the world economy, including the regional integration movement, technological development, expansion in services, as well as many other variables, there should be room for amending and improving the Set. In this connection, the draft decision and draft proposal submitted to this Conference by the Group of 77 and Group B at the ninth session of the Intergovernmental Group of Experts were constructive. Moreover, his delegation supported in principle the proposals outlined in the statement by the spokesman for the Group of 77, including for the revision of the Set itself. His delegation also had some concrete proposals to make on the implementation and improvement of the Set, as follows:

(a) While the reasons for the failure to implement fully and effectively the Set were complex and multifaceted, one major reason was that the Set was not legally binding. In adopting the Set, consideration had been given to this issue but it had been left for the future review conference to decide on it. He recalled in this connection General Assembly resolution 33/153, which required a decision on the legal character of the principles and rules.

(b) There were many difficulties in implementation because the Set contained ambiguous elements which gave rise to different interpretations and even serious controversy. Issues of grey-area trade restriction such as VERs, OMAs and RBPs in transactions involving transnational corporations were of particular concern.

(c) Technical assistance, advisory service and training constituted important aspects of the implementation of the Set. Most developing countries lacked legislation and experience in the field of controlling RBPs and urgently needed help. The list of countries requesting technical assistance given in TD/RBP/CONF.3/4 showed amply the urgent need for technical assistance. He agreed in principle with the suggestions of the UNCTAD secretariat concerning the framework of technical assistance, and hoped that the international institutions and developed countries would adopt positive measures so that meaningful activities could proceed more smoothly.

(d) In view of the complexity and importance of work concerning the Set, the Intergovernmental Group, which was the institutional machinery for the review of its implementation, had statutory limitations, making it difficult to fulfil its important task. Therefore, the issue of upgrading the present Intergovermental Group was worth serious consideration at the current Review Conference. He supported the proposal of the Group of 77 to create a special committee for this purpose.

(e) China considered that consultations on the implementation of the Set had not been conducted as fully as was possible in the past and should be improved. However, consultations should not interfere with or, otherwise divert attention from, the other substantive aspects on the agenda of the Intergovernmental Group or the special committee as the case might be. The forms of consultation should be flexible and not necessarily be restricted to one particular form.

(f) The issue of transparency was also important. Most of the transactions within and among TNCs were carried out secretly. As international trade became more liberalized, the protectionist measures of the developed countries were becoming more difficult to identify. This had caused a deterioration in transparency in RBPs and created more difficulties in the control of RBPs at the international level. Therefore, the international community should adopt further measures to increase the exchange of information and registration so as to ensure effective control of RBPs.

(g) On the question of the future review conferences on the Set, he believed that the third Conference should be held in 1995, as proposed by the Group of 77. At the same time, he considered that, so long as RBPs existed, reviews should be conducted on a regular basis. He hoped that the comprehensive review at the United Nations level would be regularized.

39. The representative of Ecuador, expressing full support for the statement of the Group of 77, said that her country did not currently have RBP control legislation, although this issue was considered to be of the highest importance and her Government was considering the adoption of appropriate legislation and the setting up of an administrative body. For this reason, Ecuador was requesting technical assistance, and advisory and training facilities from UNCTAD. She was well aware of the financial situation with respect to technical assistance and therefore called on developed countries to reinforce their activities and financial support in this area. As countries liberalized markets and privatized State enterprises, it was increasingly necessary to ensure that RBPs would not distort emerging competition. In order to give RBPs the importance they deserved, her delegation supported the idea of creating an UNCTAD committee on RBPs, to enable RBPs to be dealt with in the same conditions as the other issues debated in UNCTAD. The issue of RBPs was also considered to be of the utmost importance in the Andean Group, where decision 230 was being renegotiated with a view to protecting competition at the subregional level and preventing the harm caused by dumping, subsidies and other modalities of unfair competition. For this reason, she emphasized yet again the importance which her country attached to the implementation of technical assistance activities, as well as to transparency, consultations and Ecuador's support for the updating of the Set of Principles and Rules.

40. The representative of Indonesia said that, 10 years after the adoption of the Set, restrictive business practices continued to adversely affect world trade, particularly the trade and development of developing countries. In support of the statement made by the spokesman for the Group of 77, he indicated that his delegation wished to see the proposed improvements added to the proposals submitted by the Group of 77 at the ninth session of the Intergovernmental Group.

41. He stressed the importance of the Set at a time when fundamental changes were taking place in the world economy, and observed that lack of adequate attention to the RBP issues could jeopardize the efforts to create a more

liberalized trading system, as envisaged in the Uruguay Round of multilateral trade negotiations. Under current conditions in the world economy no country could expect to achieve meaningful growth without depending on its exports as an engine of growth. In this respect, his country had introduced several packages of economic and administrative reform since 1985, which had resulted in deregulation, particularly in the field of trade. The objective of these measures was to reduce the high-cost economy, thus ensuring economic efficiency, by broadening the industrial base, increasing national revenues through non-oil and gas exports, mobilizing capital for investment and creating new employment.

42. The Government was concerned, however, that enterprises might engage in RBPs after deregulation measures had been adopted. It was, therefore, of the utmost importance that immediate action should be taken to ensure that RBPs did not hamper the development and growth of developing countries, particularly those which had embarked on a quest to liberalize markets from regulation and monopoly. In this connection, the proposals of the Group of 77 for improving and further developing the Set embodied the minimum that his country would have liked to see. He stressed among other things that a new subparagraph should be added to section A of the Set concerning stimulation of investment and economic growth, and that improved transparency and consultation procedures should be embodied in the Set. In order to assist developing countries in their efforts to implement the Set, it was necessary to provide various kinds of technical assistance, and he welcomed the possibility of hosting a technical assistance programme in Indonesia.